

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In Re the Matters of: : 1-19-46591-jmm
:
ASHMEEN MODIKHAN, :
:
Debtor. : Brooklyn, New York
: September 1, 2021
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[212] ORDER SCHEDULING IN-PERSON HEARING FOR INSPECTION OF
PROMISSORY NOTE.(RE: RELATED DOCUMENT(S)49,200. SIGNED ON
8/23/2021. IN-PERSON [200] ORDER DIRECTING PARTIES TO CONFER
RESPECTING INSPECTION OF PROMISSORY NOTE. IT IS ORDERED, THAT
BY WEDNESDAY AUGUST 18,2021, DEBTOR AND RUSHMORES COUNSEL
SHALL CONFER TO ARRANGE A MUTUALLY AGREEABLE TIME AND PLACE
FOR THE DEBTOR TO INSPECT THE NOTE; AND THAT RUSHMORE AND THE
DEBTOR SHALL ADVISE THE COURT OF THE ARRANGEMENTS FOR NOTE
INSPECTION AT THE TELEPHONIC HEARING SCHEDULED FOR AUGUST 19,
2021 AT 10:30 A.M.; AND IT IS FURTHER ORDERED, IF THE PARTIES
CANNOT AGREE ON A PROCEDURE FOR NOTE INSPECTION, THE COURT
MAY DIRECT WHEN AND WHERE THE NOTE WILL BE MADE AVAILABLE FOR
INSPECTION(RE: RELATED DOCUMENT(S)49). SIGNED ON 8/13/2021.
TELEPHONIC [49] MOTION FOR RELIEF FROM STAY AS TO THE
PROPERTY LOCATED AT 8710 149TH AVENUE, HOWARD BEACH, NY
11414. [128] MOTION TO STRIKE EXHIBITS BY RUSHMORE LOAN
MANAGEMENT SERVICES, LLC RELATING TO TRANSFERS OF PROOF OF
CLAIM 6-1. [90] OBJECTION TO PROOF OF CLAIM #6-1 TIKI SERIES
IV TRUST FILED BY ASHMEEN MODIKHAN (ATTACHMENTS: #1 EXHIBIT
EXHIBIT 1 #2 EXHIBIT EXHIBIT 2 #3 EXHIBIT EXHIBIT 3 THROUGH 8
#4 EXHIBIT EXHIBIT 9 THROUGH 12 #5 EXHIBIT EXHIBIT 13 #6
EXHIBIT EXHIBIT 14) FILED VIA ELECTRONIC DROPBOX (JJK)
BEFORE THE HONORABLE JIL MAZER-MARINO
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For Creditor, Board: BORAH GOLDSTEIN ALTSCHULER NAHINS
Of Managers of the & GOIDEL, P.C.
Patchogue Homes Corp. BY: JEFFREY CHANCAS, ESQ.
Condominium No. 2 377 Broadway
(via telephone) New York, NY 10013

For Rushmore Loan FRIEDMAN VARTOLO, LLP
Servicing: BY: KATHERINE HEIDBRINK, ESQ.
85 Broad St., Suite 501
New York, NY 10004

1 APPEARANCES CONTNUED:

2

3 For Rushmore Loan WOODS OVIATT GILMAN
4 Servicing: BY: MICHELE BONSIGNORE, ESQ.
1900 Bausch & Lomb Place
Rochester, NY 14604

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Debtor: ASHMEEN MODIKHAN

6

Court Transcriber: ADL Transcription Services, Inc.
24 Crossway Drive
Deer Park, New York 11729

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24 Proceedings recorded by electronic sound recording,

25 transcript produced by transcription service.

1 COURT OFFICER: On Calendars 23, 24, 25 and 26 and
2 27, Ashmeen Modikhan, Case 19-46591. We're going to do
3 appearances, but I'm going to start with the party on the
4 phone. Your appearance, please?

5 MR. CHANCAS: Yes. Good afternoon, Your Honor.
6 Jeffrey Chancas, Borah Goldstein Altschuler Nahins and Goidel
7 PC for creditor, Board of Managers of the Patchogue Homes
8 Corp. Condominium Number 2.

9 THE CLERK: Parties in the courtroom, your
10 appearances, please?

11 MS. HEIDBRINK: Good afternoon, Your Honor.
12 Katherine Heidbrink for Rushmore Loan Management Services,
13 Claim Number 6, the Ozone Park property, and the full name of
14 my client is Rushmore Loan Management Services, LLC a
15 servicer for U.S. Bank Trust National Association as Trustee
16 of Dwelling Series IV Trust.

17 MS. BONSIGNORE: Good afternoon, Your Honor.
18 Michelle Bonsignore from Woods Oviatt Gilman. I am here on
19 behalf of -- I'm here with respect to the Howard Beach
20 property and we were retained for the motion for relief. We
21 represent Rushmore Loan Management Services, LLC as servicing
22 agent for U.S. Bank National Association as legal title
23 Trustee for [inaudible] 2016 SC6 Title Trust.

24 MS. MODIKHAN: Good afternoon, Your Honor. Ashmeen
25 Modikhan, the Debtor.

1 MR. HOSEIN: Good afternoon, Your Honor. This is
2 Steven Hosein [inaudible]

3 THE COURT: All right. Good afternoon, everybody.
4 Thank you for coming in. The purpose of this hearing is
5 limited to allowing the Debtor to inspect the notes and also
6 just to do some housekeeping after that process is done, so
7 that we can establish an appropriate briefing schedule for
8 whatever remains to be briefed, okay?

9 Although, I'm not certain, pardon me that there is
10 anything left to be briefed, but we'll touch upon that in a
11 minute.

12 I do want to be mindful of everybody's health and
13 safety, so I want to talk about how we should go about
14 looking at the notes.

15 So my suggestion is that we start with the note that
16 Truman is holding. That's Ms. Bonsignore's client. And then
17 in just a moment, we'll just ask Ms. Bonsignore to place the
18 original copy of the note on the podium, and then after
19 you've stepped back to your counsel table, Ms. Modikhan can
20 then inspect the note and then retreat back to the counsel
21 table.

22 Once Ms. Modikhan has looked at the note, then I'll
23 ask Ms. Leonard to retrieve the note so that I could look at
24 it as well.

25 And then after that, we'll bring it back to Ms.

1 Bonsignore and then we can have a discussion. I would like
2 everybody to speak from the counsel tables. If you're going
3 to speak, there's really no reason to go to the podium. I'll
4 be able to hear you just fine, and that way if we use that
5 procedure, nobody will have to get too close to anybody and
6 we can be as safe as possible.

7 Ms. Modikhan, is that an okay way to proceed?

8 MS. MODIKHAN: I agree with that, Your Honor.

9 THE COURT: Okay, Ms. Bonsignore, is that
10 acceptable?

11 MS. BONSIGNORE: Yes.

12 THE COURT: All right.

13 MS. MODIKHAN: Your Honor, can I just say something?

14 THE COURT: Just one second, please. Ms. Heidbrink,
15 I intend to use a similar protocol for examination of your
16 client's note. Is that an acceptable way to go forward?

17 MS. HEIDBRINK: Yes, Your Honor.

18 THE COURT: Okay, thank you. Yes, Ms. Modikhan?

19 MS. MODIKHAN: Your Honor, I'm just going to request
20 if we can get a copy of it? Maybe after the reviewing? Is
21 that possible?

22 THE COURT: What we can do is after Ms. Bonsignore
23 and Ms. Heidbrink go back, they can make copies and send you
24 copies. I have to tell you, though, that there are numerous
25 copies already attached to the pleadings that have already

1 been filed, so I'm not sure what having a copy of this note
2 will do, but I also don't think that either Ms. Bonsignore or
3 Ms. Heidbrink would have a problem with sending you an email
4 with another copy attached. It's going to be the same thing
5 that should be attached.

6 On the other hand, I understand why you want it,
7 because if it looks different than what's attached to the
8 motions --

9 MS. MODIKHAN: Yes.

10 THE COURT: -- you want to bring that to my
11 attention.

12 MS. MODIKHAN: Yes. That's the reason.

13 THE COURT: Right. I understand.

14 MS. MODIKHAN: But since it's in the courtroom and
15 if we have access, then we can just get a copy right here, so
16 I can -- you know?

17 THE COURT: No. I won't make a copy right here.

18 MS. MODIKHAN: I'm sorry?

19 THE COURT: I won't make a copy right here. I
20 won't.

21 MS. MODIKHAN: Okay.

22 THE COURT: Okay.

23 MS. MODIKHAN: Thank you.

24 THE COURT: All right, so why don't we get started.
25 Ms. Bonsignore, why don't you -- take your time.

1 MS. MODIKHAN: So this is actually in Countrywide.
2 This note is with Countrywide. Thank you, Your Honor.

3 THE COURT: All right, thank you.

4 MS. MODIKHAN: May I step back to the podium?

5 THE COURT: Yes, ma'am. Go ahead.

6 MS. MODIKHAN: I'm looking at the document, Your
7 Honor -- something on the top?

8 THE COURT: Yes?

9 MS. MODIKHAN: Rushmore? I never got a copy of
10 whatever is in front of that note, and that note is with
11 Countrywide not Rushmore, not U.S. Bank, not [inaudible], not
12 Tiki or Tiki's [inaudible], but I never got a copy of that,
13 whatever is in front of that note, so when you look at it,
14 please --

15 THE COURT: Of course. I am aware that the note is
16 with Countrywide.

17 MS. MODIKHAN: Yes.

18 THE COURT: That was the original lender. That
19 makes perfect sense to me.

20 MS. MODIKHAN: Yes, it's only with Countrywide, and
21 that's who my lender was and then Bank of America and that's
22 it. Nobody else I had any agreements with nobody else I had
23 any -- nothing.

24 THE COURT: Right. No, I understand. I understand
25 completely and remember the purpose of the hearing is just

1 for inspection of the note. It's not argument.

2 MS. MODIKHAN: Yes.

3 THE COURT: I have all of the arguments in the
4 motion. I understand everything, so that's just fine. It's
5 just to see the note, the original note, okay?

6 Ms. Bonsignore, do you want to be heard on
7 something?

8 MS. BONSIGNORE: Your Honor, in the interest of
9 efficiency, I do have a certified copy if you'd like me to
10 provide it, I'd be happy to do so.

11 THE COURT: Thank you so much. Yes. So why don't
12 you put that certified copy on the podium and then Ms.
13 Modikhan can retrieve it, and then after Ms. Modikhan steps
14 back with her certified copy, Ms. Leonard will be so kind
15 enough as to retrieve the original note from the podium for
16 me.

17 MS. BONSIGNORE: I'm sorry, I'm putting -- just the
18 certified I'm leaving here? And the original I'm taking
19 back?

20 THE COURT: Why don't you leave the original copy
21 there, because I want to look at it as well, and Ms.
22 Modikhan, you take the certified copy once Ms. Bonsignore is
23 back to her table and then leave the original note for me to
24 look at.

25 MS. MODIKHAN: Your Honor, what I'm also requesting

1 is like a letter in front of the note that Rushmore's dated
2 August 25, 2021. I don't have a copy. I've never received
3 that either. So when you see it -- we'll talk about it, it's
4 just kind of difficult for me to explain it when you don't
5 have it in front of you.

6 THE COURT: Sure, of course.

7 MS. MODIKHAN: Okay, thank you.

8 MR. CHANCAS: Your Honor?

9 THE COURT: Yes?

10 MR. CHANCAS: Yes, Jeffrey Chancas. I just thought
11 maybe I could give a two-sentence explanation of why I phoned
12 in, because I don't know that I have to be on for the whole
13 hearing, and I can kind of explain why it was sort of a
14 last-minute decision? I don't know -- if there's just a
15 pause of people are reviewing documents, [inaudible] complex
16 reason for being on.

17 THE COURT: All right, hold on one second, Mr.
18 Chancas.

19 MR. CHANCAS: Yes. Thank you, Your Honor.

20 THE COURT: Go ahead, Mr. Chancas.

21 MR. CHANCAS: Well, the -- my client -- this is the
22 property that my client is the Board of the Howard Beach
23 property. I was supposed to put in opposition to the
24 objection to my client's claim by tomorrow. Based on the
25 papers that I've seen submitted by the lender and also by the

1 Trustee in opposition to Ms. Modikhan's request to sell, my
2 thinking, and I'm just saying this without prejudice, but my
3 thinking at this point is, if for whatever reason the Court
4 were to exceed to the Trustee's request to abandon the
5 property and have it -- there was no stay and whatever rights
6 under state law, it's conceivable that I would withdraw the
7 claim, because the claim was really, as with the lender, the
8 claim was made in the context when it was a Chapter 13.

9 THE COURT: Mr. Chancas --

10 MR. CHANCAS: I was hoping to get --

11 THE COURT: -- I'm sorry to interrupt you, but
12 apparently you weren't on yesterday's hearing, because
13 [inaudible] the answer to your question.

14 So, there was a hearing on that motion, and I denied
15 the motion. The debtor has an opportunity to make a motion
16 to request the Trustee to abandon the property. It wasn't
17 something I was going to do sua sponte. So as we stand now,
18 the motion to sell is denied, but there's been no application
19 to the Court to abandon the property.

20 MR. CHANCAS: All right. Well, I guess then
21 perhaps -- I guess my wish was to get an extension of time to
22 put in opposition to see where that issue goes, because --

23 THE COURT: No, sir. No, sir. No, sir. We need to
24 get this done. You need to either file an objection or not.

25 MR. CHANCAS: Okay.

1 THE COURT: And the reason I'm saying that is
2 because we gave -- I knew that we needed to accommodate some
3 scheduling issues on behalf of everybody and so the schedule
4 is put in place based on everybody's concerns and -- but
5 before I say that, let me walk back a bit. Let me just not
6 give you the reflects of no.

7 How much time do you need? Because again, we
8 extended the time because there were concerns. So what time
9 are you looking for by way of extension?

10 MR. CHANCAS: Well, I guess I was going to say a few
11 weeks. The reason I'm saying that is because if the
12 property, I'm just giving a hypothetical scenario, if for
13 whatever there's a motion and the property is abandoned and
14 we're dealing -- the whole concept of filing the claim was
15 really an in-rem claim. It wasn't so much for -- I don't
16 think there would be money from the estate. It's
17 conceivable, I'd withdraw the claim and there wouldn't be a
18 need for opposition and a reply and so forth.

19 And I thought perhaps, if we see where things go,
20 that's a possibility because the claim is really based on it
21 being a Chapter 13 where there might be some payout. In this
22 situation, if it's -- you know, if it's going to be
23 determined under state law or the lender is going to proceed
24 with the foreclosure or whatever, and we're in second
25 position anyway, and I don't know there's sufficient funds

1 even to be paid from a sale.

2 You know, I don't know that it's worth the time and
3 effort with respect to a claim that I probably don't expect
4 to be paid from the estate. It's more based on what the lien
5 is and that would be a state law issue.

6 You know, it's possible not to go through all the
7 litigation on that issue, so I was hoping for a few weeks to
8 see if there's no motion made, then fine. I'll do -- and
9 have the opposition, but it may become somewhat unnecessary
10 depending what happens with that issue.

11 THE COURT: That's absolutely true. The one thing I
12 know about this case is that it's unpredictable. Anything is
13 hypothetically possible. There's any number of applications
14 that could or could not be paid. I do feel compelled to wrap
15 up this case and to get all of these issues resolved in a
16 prompt fashion.

17 I'm not inclined to take a wait and see attitude.
18 It's really a business decision for you and your client,
19 whether you want to spend the time objecting, if perhaps it
20 could be a conditional order where you agree that the claim
21 is disallowed, provided however, there's no finding one way
22 or the other with respect to your client's claims and liens.

23 So maybe that's the way to go, but that's something
24 that you would have to discuss with Ms. Modikhan first, and I
25 apologize, but I can't -- so many things in this file that

1 are unexpected, and I know that you don't want to spend time
2 and money, or your client doesn't want to spend time and
3 money on this, but unfortunately, I cannot accommodate that.
4 You really have to make a decision whether you're going to
5 respond or not.

6 MR. CHANCAS: All right. All right, I'll do so,
7 Your Honor. All right, very good. Thank you. I'm going to
8 leave the call. There's no point at this point. I just wanted
9 to address that issue.

10 THE COURT: All right, thank you very much for
11 calling in. I appreciate that.

12 MR. CHANCAS: All right, thank you, Your Honor.

13 THE COURT: Thank you. All right. I would like the
14 opportunity to take a quick look at the note.

15 Ms. Leonard, can I impose upon you to pick it up for
16 me? I just need the original.

17 Ms. Modikhan, did you compare the original to the
18 certified copy?

19 MS. MODIKHAN: Yes, I did. But again, Your Honor,
20 I'm going to look at what I have at home also and I'm going
21 to compare and make sure that, as I said, the lender is
22 Countrywide.

23 THE COURT: I hear what you're saying.

24 MS. MODIKHAN: Yes.

25 THE COURT: All right, so what I'm looking at, just

1 for the record, is a 7-page document.

2 The first two pages of the document is a letter
3 dated August 25, 2021, to the attention of the Bankruptcy
4 Department for Woods Oviatt Gelman LLP regarding Mortgagor
5 Ashmeen Modikhan for the property address of 8710 149th
6 Avenue, Howard Beach. The letter is signed by David Segulvia
7 (ph.) Rushmore Loan Management Services LLC.

8 It's acknowledged and agreed by Brandy Sec (ph.) who
9 is -- is that WoodsDefaultServices.com and it's an agreement
10 for the recipient of the letter to act as an agent with
11 respect to holding these documents.

12 And there's a Rider to that letter, Rider A
13 describing that the documents are the original note from
14 Countrywide Home Loans and a note endorsement from
15 Countrywide Home Loans endorsing blank.

16 So that Rider A is two pages and it's signed by
17 David Seguliva from Rushmore and it's acknowledged by the
18 same Brandi Sec. After the two-page letter and the two-page
19 rider we have an original note.

20 It has an original stamp on top and it has an
21 original stick-on label with the bar code. Notice dated
22 April 24, 2007, it references property 8710 149th Avenue,
23 Howard Beach, New York 11414-1439.

24 It has two holes punched at the top of the first
25 page, and the second page of the note. The note is in the

1 amount of \$179,000. It's in favor of Countrywide Home Loans
2 and the first page of the note is initialed.

3 There are bar codes at the bottom of the first page
4 that are inked and not original labels, and the note is
5 initialed on Page 1 and there's an original ink signature on
6 Page 2. The back of Page 2 has an endorsement, pay to the
7 order of blank without recourse, signed by Michelle
8 Sjolander, S-J-O-L-A-N-D-E-R.

9 There's also an elonged blank page, pay to the
10 order of blank, without recourse by Michelle Sjolander who is
11 described as the executive vice president of Countrywide.

12 So that's what the document looks like. Okay, I'm
13 going to pass this document back to Ms. Leonard. Thank you.
14 And you can put it back on the podium.

15 MS. MODIKHAN: Can I take one more moment with that,
16 please?

17 THE COURT: One second. All right, thank you for
18 your patience, Ms. Modikhan. Go ahead.

19 MS. MODIKHAN: Can I have one moment? You read
20 something that maybe I missed.

21 THE COURT: You want to look at the document one
22 more time?

23 MS. MODIKHAN: Please.

24 THE COURT: Of course. Sure.

25 MS. MODIKHAN: Thank you, Your Honor.

1 THE COURT: Yes.

2 MS. MODIKHAN: Thank you. I appreciate it.

3 MS. BONSIGNORE: Sure.

4 MS. MODIKHAN: Your Honor, I just want to -- on the
5 hearing on July 29th, and I'm just reading from the
6 transcript, we also said we think that we would spend some
7 time going through all the assignments of the note and the
8 mortgage, but I think it will be just simpler for the
9 servicer and the mortgagee to just get a collateral file
10 including this.

11 So I did reach out in my emails and requested that
12 and was told that we just wanted the wet ink. On the
13 collateral file is all my payments and whatever I've made,
14 that would suffice also in this matter, and that's where I
15 go back to the accounting of all of this, and again I'm
16 stating they're not the lender. They're not -- they claim
17 they're investors, servicers, the agents, you know, they're
18 actually debt collectors. I just wanted to state that to
19 you. I appreciate your time.

20 THE COURT: Thank you, Ms. Modikhan. So with
21 respect to the collateral file, the collateral file, the
22 important part of the collateral file for me was the original
23 promissory note.

24 With respect to the payments, you know, if there is
25 a dispute as to the dollar amount of the claim the actual

1 amount of claim that is owed, then there's a list of payments
2 made that are attached to the proof of claim. And those are
3 the payments they have.

4 If you think that there are payments that are not
5 reflected in that, well then you go to your bank statements
6 and you identify the payment that is not reflected in their
7 proof of claim and that's a separate issue then whether they
8 have the original promissory note.

9 You said on many occasion that they are not the
10 lender, and every time you've said it, I've heard it, and the
11 reason that I don't respond is because I want to be mindful
12 of how important this is to you and get all of the
13 information, but I will tell you that as a matter of law, the
14 original lender is allowed to assign their interest in a
15 loan. They are simply allowed to do it.

16 There is no requirement that they keep it and that
17 you make the payments directly to them. They are allowed to
18 sell, literally sell these promissory notes to other people,
19 and that's precisely what they did based on the documents
20 that were filed.

21 And the purchaser of the note has the right to
22 collect on the note and enforce the mortgage the same as
23 Countrywide. So that's the state of the law.

24 MS. MODIKHAN: I do understand that, Your Honor.
25 However, they haven't filed a proper proof of claim 410 and

1 even on the [inaudible], Number 2 on that, they claim they
2 didn't receive [inaudible], so it's incorrect. It
3 [inaudible] follow that 410. It says --

4 THE COURT: I know. You've said this the last time
5 you were here and I don't mean to interrupt but I did drift
6 into addressing your legal arguments which I did not mean to
7 do, because we simply --

8 MS. MODIKHAN: Okay.

9 THE COURT: It's just not --

10 MS. MODIKHAN: All right.

11 THE COURT: I want to be mindful of everybody's
12 time.

13 MS. MODIKHAN: Yes. I do feel like I'm repeating
14 myself over and over and I do apologize for that.

15 THE COURT: It's important to you.

16 MS. MODIKHAN: Yes, it is.

17 THE COURT: I understand that. Everything you say,
18 I hear.

19 MS. MODIKHAN: There are a lot of people who have
20 been going through this. I am -- anyway, now I know, so we
21 have the other one to deal with.

22 THE COURT: Thank you. Ms. Heidbrink, I am going to
23 ask you to put the note on the podium. You didn't by chance
24 bring an extra copy. I didn't ask you to, so I'm not --

25 MS. HEIDBRINK: No, Your Honor. Unfortunately I did

1 not have a spare copy. I have personally verified that it's
2 the same as what was filed with our claim to Number 6. Same
3 for the redactions, of course.

4 THE COURT: All right. Right, right.

5 MS. HEIDBRINK: And I'd be happy to make a photocopy
6 next time I'm back in my office, which will be some time next
7 week and can mail it to Ms. Modikhan.

8 THE COURT: Okay, would you be comfortable and --
9 see, these notes, basically are incredibly important.
10 Without the note, the lender can't do anything and they are
11 very proprietary about who gets to hold the note and the
12 lawyer has to make sure basically that the note doesn't go
13 out of their sight.

14 So it's -- for her to go back to her client if
15 anything happens to that note, she will be fired. So I need
16 to be mindful of that.

17 All that, would you be comfortable with my courtroom
18 deputy taking the note into my chambers and making a copy and
19 you can say no.

20 MS. HEIDBRINK: Oh, Your Honor, I would absolutely
21 be comfortable with that. Hopefully that could help resolve
22 things more quickly at this hearing.

23 THE COURT: All right, so that's what we will do.
24 We will take the note. I may go back into chambers with my
25 courtroom deputy to do that, because I want to make sure that

1 the staple is taken out properly. Even though Ms. Leonard
2 knows how to do that, I just -- I want to be careful and
3 respect everybody's interest in everything.

4 So that way, you'll get the copy of your note,
5 you'll be able to see it side by side, just like you did with
6 the certified copy and Ms. Heidbrink can be assured that all
7 steps are being taken to protect the rights of her and her
8 client. Okay?

9 So with that said, Ms. Heidbrink, may I ask you to
10 put the note on the podium, please?

11 MS. HEIDBRINK: Certainly.

12 THE COURT: All right, Ms. Modikhan, do you want to
13 inspect?

14 MS. MODIKHAN: Thank you, Your Honor. Again
15 [inaudible] just wanted to [inaudible] with that. Thank you.

16 THE COURT: I'm sorry, Ms. Modikhan, I didn't hear.
17 I'm so sorry.

18 MS. MODIKHAN: I said I just -- you know, a
19 signature, when you do a signature on the back you feel a
20 little print and I notice that I didn't feel that in those
21 [inaudible] actually. So you know, I'm just saying --

22 THE COURT: Okay.

23 MS. MODIKHAN: -- normally when you sign something
24 and you put your hand on the back of it, you would feel a
25 little print, and I didn't feel that on these, so just for my

1 [inaudible]. Thank you.

2 THE COURT: Thank you. Ms. Leonard, when you have a
3 moment, may I ask you to get the note for me? I just want to
4 take a look at it, too. Thank you.

5 After I look at it, we'll go back, if that's okay
6 with you, and we'll make a copy of it? Okay, thanks.

7 All right, so I've been passed a two-page document.
8 It has a two-hole punch at the top. It's a promissory note
9 dated November 21, 2005. It relates to 9422 Magnolia Court,
10 Unit Number 1B, Ozone Park, New York, 11417-2958.

11 It's in the original principle amount of \$400,000.
12 It's made in favor of Americas Wholesale Lender. The first
13 page is stamped original in black ink. The bottom of the
14 first page is initialed on the bottom, right-hand side.
15 There's two bar codes on the bottom. They're imprinted.
16 They're not stickers.

17 The second page has a signature. It looks like it's
18 ink. It doesn't look like it's stamped. The second page is
19 also stamped original.

20 On the back of the second page, it says pay to the
21 order of blank, without recourse. It's endorsed in blank and
22 it's signed by David Spector, Managing Member.

23 There's also two X's on back of the last page in
24 ink. They're not stamped. They're handwritten. All right,
25 so I'm about to leave the courtroom. I just ask you to all

1 remain in the courtroom just for one moment while we go make
2 a copy and we'll be right back. Okay?

3 THE CLERK: All rise.

4 All rise, for Judge Jil Mazer-Moreno.

5 THE COURT: Okay, please be seated. All right, so
6 Ms. Leonard just put two documents on the podium. One is the
7 original note and one is the copy of the note.

8 The copy of the note is actually three pages,
9 because the second page of the note has [inaudible] so
10 instead of doing a double-sided copy, we just put the back of
11 the second page on a third sheet of paper.

12 So Ms. Modikhan, just go to the podium, compare the
13 original note to the copy that I made and then after you've
14 done your review, take the copy and if you would be so kind,
15 leave the original note on the podium for Ms. Heidbrink.

16 MS. MODIKHAN: Sure. Thank you. Thank you, Your
17 Honor.

18 THE COURT: Thank you, Ms. Modikhan. Ms. Heidbrink,
19 may I ask you to retrieve your original note.

20 All right, so that's all we're going to do by way of
21 inspection today. So I want to make sure that we're all
22 clear as to next steps, and that's with respect to the motion
23 for relief from stay, the objection to Claim Number 5 and the
24 objection to Claim Number 6.

25 Even though we're not here today on the objection to

1 Claim Number 5, I just want to make sure that we don't have
2 to come back and do more work and talk about more briefing,
3 because all of these issues are kind of related. So with
4 respect to the claim objections, what happened was Ms.
5 Modikhan filed a motion objecting to Claim Number 5 and filed
6 a motion objecting to Claim Number 6.

7 The way it usually works is after a motion is filed,
8 objecting to claims and the creditor files a response and
9 then the debtor, or the person objecting to the claim has the
10 opportunity to file a reply and the reply is limited to
11 what's raised in the response. Reply isn't an opportunity to
12 raise new objections. That's generally not how it works.

13 So in a typical scenario, that's what would happen.
14 There'd be an objection, a response, and a reply. Sometimes
15 in appropriate circumstances, the creditor has the right to
16 file what's called a sur reply, which is an answer to the
17 reply and sometimes that happens when the reply raises
18 matters that aren't raised in the original motion, right?

19 What's happened in this case is kind of different.
20 We have an objection. We have replies by each creditors, and
21 then we have the letter from Ms. Bonsignore's colleague, Ms.
22 Fugate which talks about inspection of the note and we came
23 here and we looked at the note.

24 So really, it seems to me that we should be done
25 with briefing. Ms. Modikhan, I know that you filed an

1 additional pleading this morning with a consent judgment
2 against Rushmore. I can consider in connection with the
3 claim objections, anything that you filed on the docket,
4 that's fine, and many of them you've identified as related to
5 the claim objections.

6 Ms. Modikhan, as we sit here today, do you have any
7 other documents that you need to file with respect to the
8 claim objections? Are there any other matters you want to
9 raise in a pleading with the Court?

10 MS. MODIKHAN: Your Honor, I just wanted to go
11 through everything again, if you would give me -- I'm so
12 sorry.

13 THE COURT: Thank you.

14 MS. MODIKHAN: I just want to take a look at this
15 and then I can look over everything, because I just came here
16 for the inspection. I didn't realize that we had a hearing.
17 I just came here just to put the inspection. I didn't know I
18 had to do anything else. I'm not prepared for that at the
19 moment. So if we can -- I would really appreciate that.

20 THE COURT: That's fine. I kind of anticipated
21 that. So what I'm thinking though, is I would like to set a
22 deadline to you to file whatever you're going to file in
23 addition to what's already been filed. You may sit. That's
24 fine.

25 And then even though a sur reply isn't often -- it's

1 not permitted by the local rules, but in this case, I think
2 it's important that you respond to this last pleading that
3 Ms. Modikhan has filed, and also I know that there's a
4 document that was filed today, motions to strike filed, so to
5 the extent that they were late to the claim objections, you
6 should have the opportunity to respond.

7 So what I'd like to do is to set a deadline, Ms.
8 Modikhan, for you to file whatever else you want to file and
9 then set another deadline for each of the two creditors to
10 respond. So let me start with you. What would you like your
11 deadline to be for you to file this last pleading in
12 support -- in further support of your objection to Claim
13 Number 5 and your objection to Claim Number 6?

14 MS. MODIKHAN: I don't even have my calendar here.
15 That's my error, for not working with my calendar. I have so
16 many things [inaudible]. Do we have a calendar I can look
17 at?

18 THE COURT: Sure. So --

19 MS. HEIDBRINK: Your Honor, I don't mean to
20 interrupt, but I'm having a little trouble hearing Ms.
21 Modikhan, so if she could please speak up when she speaks?

22 THE COURT: Thank you, Ms. Heidbrink. Ms. Modikhan,
23 because of all of the boundaries and because of the masks,
24 while I do this, too, I just need to be mindful, and I think
25 you need to be mindful of speaking loudly, so I would just

1 ask you to do that.

2 MS. MODIKHAN: Okay.

3 THE COURT: Thank you. Okay, so let's think about
4 dates. Okay, so today is September 1st. I believe, and I'm
5 looking at -- let me just look at my -- I think that the next
6 deadlines in this case are September 21st which are deadlines
7 for certain defendants and the adversary to file responses to
8 your motions to dismiss. That's also the deadline for you to
9 respond to I believe, the motions to dismiss that were filed
10 by Ms. DeRosa, Ms. Shahdood and Mr. Aronow.

11 So, I'm wondering if maybe by the end of next week,
12 Friday, September 10th, if you could file whatever you're
13 going to file with respect to the two claim objections.

14 MS. MODIKHAN: I will check the calendar. Even if
15 on that date if I do need some more time, may I -- I may not
16 need it, but just in the event.

17 THE COURT: Sure. Sure. If you do need more --

18 MS. MODIKHAN: I'm sorry.

19 THE COURT: That's fine. I understand. If you do
20 need more time, then please let me know as soon as possible.
21 Okay?

22 MS. MODIKHAN: Sure.

23 THE COURT: So right now we're going to have
24 September 10th as the deadline for Ms. Modikhan to file
25 whatever she's going to file with respect to the claim

1 objections.

2 Now, I'd like to look at Ms. Bonsignore and Ms.
3 Heidbrink. You may want to file something. You're not
4 obligated to file what I would term in this case as sur
5 reply but if you do want to do that, when should it be due?
6 And Ms. Heidbrink, I know that you're leaving for leave.

7 MS. HEIDBRINK: Yes, Your Honor. I think that
8 September 24th which is two weeks after Ms. Modikhan's
9 deadline might be a good deadline. I may not be personally
10 handling it for very obvious reasons, but I do believe there
11 has been quite a lot filed already.

12 THE COURT: It --

13 MS. HEIDBRINK: With respect to these claim
14 objections.

15 THE COURT: Okay.

16 MS. BONSIGNORE: That's fine with us, too, Your
17 Honor.

18 THE COURT: Okay. So any sur reply to be filed by
19 the -- Ms. Heidbrink's client and Ms. Bonsignore's client
20 will be filed by September 24th.

21 MS. MODIKHAN: I appreciate that, Your Honor.

22 THE COURT: No problem. Okay, so now we have the
23 motion for relief from stay. And for me it's the same kind
24 of posture, except it's kind of reverse.

25 So here, Ms. Bonsignore's client made a motion. Ms.

1 Modikhan you objected, and then there were some additional
2 pleadings. Ms. Bonsignore, please correct me I'm mistaken.
3 There are so many documents on the docket, and I'm not a
4 hundred percent sure I'm getting this right.

5 But I think that your colleague Ms. Fugate filed a
6 pleading that deals with Rooker Feldman, right? I think at
7 this point, it's up to Ms. Modikhan to file what I would call
8 a sur reply.

9 So Ms. Modikhan --

10 MS. MODIKHAN: I'm sorry, what did you say?

11 THE COURT: So I apologize. I need to speak more
12 loudly.

13 MS. MODIKHAN: Yes.

14 THE COURT: So the motion for relief from stay is
15 flipped, so here, Ms. Bonsignore's client made a motion. You
16 had the opportunity to object to that motion, which you did,
17 and one of the reasons we're here today to inspect the note
18 was because of that inspection. So we have the motion. We
19 have the response, and now it's time for the reply.

20 So now it's time for Ms. Bonsignore's client to file
21 the reply, but in essence she kind of did, because before we
22 got here today, Ms. Bonsignore's colleague, Ms. Fugate, she
23 filed -- if you just give me one moment, I'll get the docket
24 up and I'll let you know what I'm talking about. It may
25 clarify things.

1 All right, so what Ms. Fugate filed was document
2 number 215 on the docket. It's an affirmation in support of
3 the motion for relief from stay.

4 MS. MODIKHAN: What was that, Your Honor?

5 THE COURT: Oh, the docket number is 215. And that
6 was filed by Ms. Fugate's client, so that's Truman. That's
7 what we call Truman.

8 MS. MODIKHAN: When was it filed?

9 THE COURT: Oh, apologize. That was filed on August
10 27th, 2021.

11 MS. MODIKHAN: Okay. I'm going to have to review
12 that again. Again, I'm not here -- I wasn't prepared for
13 that today, too. So I'm going to make sure that I look for
14 that and from what I'm understanding, I'm going to reply to
15 that. That's what you said, right?

16 THE COURT: Well, not precisely, but I think I'm
17 actually okay with -- we'll do it a little backwards.

18 If you want to do one more pleading that includes
19 whatever else you're going to say about the motion for relief
20 from stay including whatever observations you have about the
21 note. I'm going to give you the opportunity to do that by
22 September 10th, okay?

23 And of course with respect to the objections to
24 Claim Number 5 and 6, of course you can include whatever
25 observations you want to include with respect to the notes,

1 all right? So that's September 10th.

2 And Ms. Bonsignore, I will give you the opportunity
3 to get the last word, since you're the movant. And so I
4 would set September 24th, if that's acceptable, as your
5 deadline to respond.

6 Now, honestly at that point I'm not going to permit
7 anymore documents. I will not look at anything further on
8 the document with respect to the proof of claim. The
9 objections to proof of claim to all the motions for relief
10 from stay.

11 We've already gone well beyond the pleading, the
12 pleadings that are acceptable for motion practice, but I do
13 want to make sure that everybody has the opportunity to say
14 whatever they have to say.

15 By this time, I think everything has been pretty
16 much well said. So that's what I'm going to do.

17 And then we are coming back here on the adversary
18 proceeding and on a status conference in the main case. I
19 want to say November 2nd, thank you, Ms. Leonard. I may --
20 I'm not sure what I'm going to do after September 24th. I
21 might issue a decision that I will send to all the parties.
22 I may call you back if I have questions and I want further
23 argument, or I may set it down for a status conference.

24 For now, I'm going to adjourn it to November 2nd, so
25 that it's on the same calendar date as the adversary

1 proceeding, but if I ask you to return, I may ask you to
2 return sooner than that, okay?

3 MS. MODIKHAN: Okay.

4 THE COURT: I think that's all I want to do today.
5 Does anybody have any questions or any thoughts? That aren't
6 like legal -- yes, Ms. Heidbrink?

7 MS. HEIDBRINK: Yes, Your Honor. I have one
8 practical matter. The debtor is not currently represented by
9 counsel, but Ms. Hossain who is here today has been email
10 serving us with papers.

11 Is his email address a valid way to serve the debtor
12 or to correspond with the debtor?

13 THE COURT: All right, so Ms. Modikhan --

14 MS. MODIKHAN: Mr. Hossain is my son. He helps me
15 do all the emails and stuff.

16 THE COURT: No, it's fine. Ms. Heidbrink's concern
17 is that if she sends you a document, should she be sending
18 you a document to your son's email address?

19 MS. MODIKHAN: That's fine. That's fine. It's
20 already there.

21 THE COURT: Okay.

22 MS. MODIKHAN: He helped me with the Zooming, so
23 that's fine.

24 THE COURT: Okay, so when Ms. Heidbrink or Ms.
25 Bonsignore --

1 MS. MODIKHAN: Since we -- you have my email, that's
2 fine also. What is it you're looking to send me?

3 MS. HEIDBRINK: I don't actually have Ms. Modikhan's
4 email.

5 MS. MODIKHAN: Ms. Fugate has my -- I'm sorry. Ms.
6 Fugate has my email address. I can give it to you if you
7 would like.

8 THE COURT: Okay, so I just want to nail down,
9 because I think the concern that I would have, if I was Ms.
10 Heidbrink, is emailing a document to my adversary and then my
11 adversary coming back and saying, "Your Honor, service of the
12 document, service of the reply, service of whatever pleading
13 was not proper because it wasn't -- it wasn't mailed to me by
14 snail mail," or, "Your Honor, service wasn't proper to me.
15 You should disregard it, because it was emailed to my son and
16 not to me."

17 So, Ms. Heidbrink and I'm sure, Ms. Bonsignore, want
18 to nail down what is acceptable service of process, so that
19 when we come back here there cannot be any argument that the
20 documents were not properly served.

21 MS. MODIKHAN: Well --

22 THE COURT: And I can be flexible and I'm just
23 asking you what you need.

24 MS. MODIKHAN: I'd like mail actually, because the
25 computer, you know -- I would rather first-class mail like

1 I've been doing or even priority mail if it's important,
2 because I've been trying to do that myself sending everything
3 first class or priority mail, so at least we have a tracking
4 for it.

5 THE COURT: So first class mail just so we're all on
6 the same page --

7 MS. MODIKHAN: No, not for everything, but priority
8 mail.

9 THE COURT: I'm not going to direct service by
10 priority mail, because that's expensive, and all that's
11 required under the rules is first class mail.

12 May I suggest, and this is what I'm going to suggest
13 and one of the reasons that people don't like first class
14 mail these days is many people are not working in the office,
15 so they don't have copy machines, so they scan stuff in, but
16 that may not be the case, and you are entitled to service by
17 first class mail.

18 Ms. Heidbrink, would that be an undo imposition to
19 serve via first class mail?

20 MS. HEIDBRINK: No, Your Honor. That is not an undo
21 imposition. That's what we've been doing.

22 THE COURT: Okay.

23 MS. HEIDBRINK: I was a little confused, because we
24 were receiving email service and Ms. Modikhan has been
25 mailing as well. So I was wondering if there was a more

1 convenient method for her. If first class mail continues to
2 be the most convenient method of service for her, I'm
3 certainly fine with that.

4 THE COURT: All right, so they will continue to send
5 you documents by first class mail. You will send them
6 documents by first class mail and it wouldn't hurt, if you
7 also just shot an email with an attachment, to the email
8 addresses. Ms. Modikhan, if you could do that to Ms.
9 Heidbrink and Ms. Bonsignore. Ms. Heidbrink and Ms.
10 Bonsignore, if you could also send the documents via email to
11 Ms. Modikhan's son and if Ms. Modikhan furnishes an email
12 address to you, to that address as well. It's not required.
13 It's just because things are so crazy these days and it's
14 just kind of a nice belt and suspenders, so -- Ms.
15 Bonsignore?

16 MS. BONSIGNORE: Could we get Ms. Modikhan --

17 MS. MODIKHAN: Ms. Modikhan.

18 MS. BONSIGNORE: Ms. Modikhan and Mr. Modikhan's
19 email addresses on the record, just so that we're all clear.
20 Is that okay?

21 THE COURT: Is that acceptable? Okay. So Ms.
22 Modikhan, would you mind stating on the record an email
23 address, please?

24 MS. MODIKHAN: It's AAKL123@aol.com.

25 MS. BONSIGNORE: It's A as in apple, A as in apple,

1 P as in Pear --

2 MR. HOSEIN: No, K.

3 MS. MODIKHAN: A as in apple, A as in apple, K as in
4 Kingston, L as in London, 123@aol.com.

5 MS. BONSIGNORE: Thank you. Thank you.

6 THE COURT: Thank you, Ms. Modikhan.

7 MS. HEIDBRINK: And that's AAK123@aol.com?

8 MS. MODIKHAN: No, it's AAKL123@aol.com.

9 MS. HEIDBRINK: Thank you, Ms. Modikhan. I was
10 missing the L.

11 MS. MODIKHAN: Okay.

12 THE COURT: Mr. Hosein?

13 MR. HOSEIN: My email address is Steven, S-T-E-V-E-N
14 A like Apple, Hosein, H-O-S-E-I-N at aol.com.

15 MS. HEIDBRINK: Thank you, Mr. Hosein.

16 MS. BONSIGNORE: Thank you.

17 THE COURT: All right, thank you, Mr. Hosein. All
18 right, thank you very much. You can be seated, Ms. Modikhan.
19 Thank you. I think that this was productive. Thank you all.

20 Is there anything else I should address before I
21 dismiss everybody today?

22 MS. HEIDBRINK: Your Honor, I'm sorry, one more
23 thing.

24 THE COURT: Sure.

25 MS. HEIDBRINK: We had at the July 29th hearing,

1 Your Honor ruled on the motion to strike the assignments of
2 mortgage attached to our transfer of claim, and which is the
3 pleading is Docket Number 128 and then the transfer of claim
4 and the exhibits are Docket 113 through 115, and then at
5 yesterday's hearing that matter was on the calendar and then
6 was moved to today's hearing for a brief adjournment.

7 I do note that that objection was untimely. We put
8 on the notice that rejection at Docket 130, but I also
9 understand the Court's concern that was raised yesterday
10 which is that the assignments of mortgage substantively tie
11 into the issues the debtor has been repeatedly raising with
12 regard to the claim objection.

13 So I am prepared to handle that however the Court
14 sees fit, but I did want to make sure that administratively
15 we were carrying that to November 2nd or that that was
16 wrapped up in what was going on or any other way Your Honor
17 prefers.

18 THE COURT: All right thank you, Ms. Heidbrink.
19 That's actually an important consideration.

20 I think what I'd like to do is to carry that to
21 November 2nd. I don't want any more briefing on that. I
22 think it's fully submitted, and I will rule on that in
23 connection with the other motions.

24 So, it will be carried to November 2nd, but I may
25 rule on it after all briefing is completed on the two claim

1 objections and the objection for relief from stay.

2 MS. HEIDBRINK: Thank you, Your Honor. That's very
3 helpful.

4 THE COURT: Thank you. And just one disclaimer. My
5 one disclaimer is that I may not rule on any of this until
6 briefing is completed in the adversary proceeding. I'm not
7 saying that's what I'm going to do. I don't think they're
8 necessarily tied to each other, but I just want to let you
9 know that there is no assurance that I'm going to rule before
10 briefing is completed, okay? I just wanted to put that out
11 there, so everybody has the right expectations.

12 So on one hand I think that the pleadings are kind
13 of related. On the other hand, I think that there is enough
14 here that perhaps I can after I review everything that's
15 briefed here. All right.

16 So again I invite anybody who has any questions, any
17 administrative matters to raise them now. That's what we're
18 here for.

19 MS. HEIDBRINK: I just had a preference for my
20 client which is that the issues relating to our standing
21 would primarily be handled within the underlying bankruptcy?
22 I know they've been ancillary matters even the adversary.

23 I will certainly put that in my amendment to the
24 motion to dismiss, but I think it's more helpful to deal with
25 standing issues within the bankruptcy case, unless

1 it's directly related to the gravamen of the adversary
2 proceeding.

3 THE COURT: Duly noted. Thank you, Ms. Heidbrink.

4 MS. MODIKHAN: Your Honor, I'm just --

5 THE COURT: No, she has the same problem.

6 MS. MODIKHAN: You're repeating it, so I appreciate
7 that.

8 THE COURT: No problem. So Ms. Heidbrink said -- I
9 just said that there's a disclaimer. I'm not sure when I'm
10 going to rule on a motion for relief from stay or when I'm
11 going to rule on the claim objection. It may be that I wait
12 until after the adversary is completely briefed. I'm not
13 sure that's what I'm going to do. I may not do that.

14 And Ms. Heidbrink said that it's her client's
15 preference that with respect to the matters relating to
16 standing, so whether Dwelling, her client, or Tiki has
17 standing to assert the claim, she's asking me to resolve that
18 in the context of the bankruptcy case, given the claim
19 objections -- in the context that the claim objections or the
20 motion to strike as opposed to resolving that issue in a
21 decision in the adversary proceeding. That's her preference.
22 It doesn't mean I'm going to do that or not do that. She's
23 expressing her preference and because I get to wear this, I
24 get to do whatever I want.

25 MS. MODIKHAN: Thank you, Your Honor. That's fine.

1 THE COURT: Okay, thank you. Okay, and again, I
2 have no problem answering questions and resolving any
3 procedural or administrative issues you want to decide, so if
4 there's anything else that should be raised, now is the time.

5 All right. So I think that we're done here today.
6 Give me one second.

7 THE CLERK: All rise.

8 THE COURT: Thank you, all. Have a good day.

9 ALL: Thank you, you too.

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I certify that the foregoing is a true and accurate transcript from an electronic sound recording of the proceedings in the above-entitled matter.

Lisa Previti:



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